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TO SECSTATE WASHDC IMMEDIATE 5404
INFO AMEMBASSY QUITO

C O N F I D E N T I A L SECTION 01 OF 02 BOGOTA 00992

E.O. 12356: DECL: OADR
TAGS: EPET, EINV, KALR, CO
SUBJECT: GOC CONTROL OF NEW PIPELINES AND NEW DECREE TO
CONTROL OIL EXPORTS AND PRICES

REFS: (A) BOGOTA 770, (B) BOGOTA 766, (C) BOGOTA 610

1. CONFIDENTIAL - ENTIRE TEXT.
2. SUMMARY: IN THE OPINION OF OCCIDENTAL'S LAWYERS, DECREE 128 IS ILLEGAL AND OCCIDENTAL MAY PETITION COUNCIL OF STATE TO SUSPEND IT. OCCIDENTAL MAY ALSO APPLY PRESSURE ON GOC BY CALLING 164 MILLION DOLLARS IN SHORT-TERM LOANS TO ECOPEPETROL AND TRYING TO KILL 195 MILLION IN LOANS THEY HELPED ARRANGE WITH U.S. AND OTHER EXIMBANKS. THE IMPLICATIONS OF DECREE 196 ARE NOT CLEAR, BUT IT MAY LIMIT OCCIDENTAL'S ABILITY TO EXPORT. AMBASSADOR HAS EXPRESSED CONCERNS TO FOREIGN RELATIONS VICE MINISTER FERNANDEZ.
END SUMMARY.
3. JAMES TAYLOR, OCCIDENTAL VICE PRESIDENT FOR COLOMBIAN OPERATIONS, AND MICHAEL MILLER, OCCIDENTAL ASSISTANT TREASURER FOR LATIN AMERICA CALLED ON AMBASSADOR JANUARY 21. TAYLOR SAID THE THREE LAW FIRMS HIRED BY OCCIDENTAL TO DETERMINE THE LEGALITY OF DECREE 128, WHICH
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GIVES ECOPEPETROL OPERATIONAL CONTROL OF NEW OIL PIPELINES AND TERMINALS (REFTELS), HAVE GIVEN THE OPINION THAT THE DECREE IS ILLEGAL; IT IS CONTRARY TO

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UNITED STATES DEPARTMENT OF STATE
DATE/CASE ID: 1 NOV 2002 200201334

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THE BASIC PETROLEUM LAW AND VIOLATES THE ASSOCIATION CONTRACT BETWEEN OCCIDENTAL/SHELL AND ECOPETROL. THE LAWYERS POINTED OUT, HOWEVER, THAT SINCE THE DECREE HAS NOT YET BEEN PUBLISHED IN THE OFFICIAL GAZETTE, IT IS NOT/NOT LEGALLY IN FORCE.

4. THE LAWYERS ADVISED THAT UNTIL OCCIDENTAL HAS BEEN FORMALLY TOLD BY THE GOC THAT THE DECREE APPLIES TO THE CANO LIMON-COVENAS PIPELINE, THERE IS NO LEGAL INJURY. CONSEQUENTLY, OCCIDENTAL HAS WRITTEN TO MINES AND ENERGY MINISTER DUQUE ASKING HIS CONFIRMATION IN WRITING THAT DECREE 128 DOES NOT/NOT APPLY TO CANO LIMON-COVENAS LINE. AFTER THE DECREE IS PUBLISHED, AND PRESUMING MINISTER DUQUE REPLIES THAT THE DECREE DOES INDEED APPLY TO THE CANO LIMON-COVENAS LINE, OCCIDENTAL THEN PLANS TO PETITION THE COUNCIL OF STATE (PART OF THE EXECUTIVE BRANCH, EQUAL IN RANK TO THE SUPREME COURT, WITH THE POWER OF JUDICIAL REVIEW OVER DECREES AND LEGISLATION) TO SUSPEND THE DECREE PENDING REVIEW OF ITS LEGALITY.

5. MILLER WENT ON TO EXPLAIN THAT OCCIDENTAL HAS PROVIDED 164 MILLION DOLLARS IN SHORT-TERM BRIDGE LOANS PENDING ECOPETROL'S RECEIPT OF 200 MILLION FROM THE ONE BILLION DOLLAR JUMBO LOAN. ONE HUNDRED MILLION DOLLARS OF OCCIDENTAL'S INTERIM FINANCING IS DUE ON JANUARY 30 AND, IF THE PIPELINE PROBLEM IS NOT RESOLVED BY THAT TIME, OCCIDENTAL MAY CALL THOSE LOANS. MILLER SAID THAT ECOPETROL IS ESSENTIALLY BRANKRUPT AT THE MOMENT, AND REPAYMENT WOULD BE DIFFICULT. IN ADDITION, OCCIDENTAL HELPED ECOPETROL ARRANGE FINANCING FROM THE U.S., FRENCH AND JAPANESE EXIMBANKS TOTALING 195 MILLION, AND MILLER INDICATED OCCIDENTAL MIGHT TRY TO KILL THOSE
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LOANS. MILLER ALSO SUGGESTED THAT THE BILLION DOLLAR JUMBO LOAN ITSELF MIGHT BE JEOPARDIZED BY THE DECREE.

6. FOR THE MOMENT, CONSTRUCTION IS CONTINUING ON THE PIPELINE, BUT TAYLOR SAID THEY HAVE SUSPENDED A PROGRAM TO HIRE AND TRAIN 200 COLOMBIANS TO OPERATE THE LINE, AND ALL CIVIC ACTION PROJECTS ALONG THE PIPELINE AND AT COVENAS HAS BEEN HALTED. OCCIDENTAL IS TRYING EVERYTHING IT CAN THINK OF TO PRESSURE THE GOC.

7. TAYLOR GAVE THE AMBASSADOR A COPY OF A NEW DECREE, 196 DATED JANUARY 17, WHICH THEY HAD JUST RECEIVED FROM ECOPETROL. THIS DECREE AUTHORIZES THE PETROLEUM AND NATURAL GAS PRICE COMMISSION IN THE MINISTRY OF MINES AND ENERGY TO SET VOLUMES OF PETROLEUM PRODUCTION AND

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EXPORT AND TO FIX THE PRICES OF CRUDES FOR EXPORT AND FOR DOMESTIC REFINING. THE DECREE STATES THAT IN DETERMINING THE VOLUME OF OIL PRODUCTION, THE COMMISSION SHOULD "TAKE ACCOUNT OF THE CHARACTERISTICS OF PETROLEUM RESERVES, THE RECOVERY OF INVESTMENTS AND THE SELF-SUFFICIENCY OF CRUDES FOR THE FUTURE OF THE COUNTRY." THE DECREE ALSO PROVIDES THAT IF OIL DEVELOPERS CANNOT SELL 25 PERCENT OF THEIR PRODUCTION FOR DOMESTIC REFINING, THEY MUST SELL TO THE BANCO DE LA REPUBLICA (CENTRAL BANK

) FOREIGN EXCHANGE EQUIVALENT TO 25 PERCENT OF PRODUCTION (THIS IS TO PRESERVE THE TRADITIONAL PAYMENT OF 25 PERCENT IN PESOS AND 75 PERCENT IN DOLLARS). THE ABOVE ARE VARIATIONS ON THE EXISTING PROCEDURES, BUT A NEW ELEMENT IS THE PROVISION OF THE DECREE WHICH GIVES ECOPETROL FIRST REFUSAL ON THE PURCHASE OF ALL OIL FOR EXPORT, AND SPECIFIES THAT THE PRICE ECOPETROL PAYS CANNOT BE MORE THAN THE PRICE PAID FOR CRUDES TO BE USED FOR DOMESTIC REFINING. THE FULL IMPLICATIONS OF DECREE 196 ARE UNCLEAR AS YET, BUT

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C O N F I D E N T I A L SECTION 02 OF 02 BOGOTA 00992

E.O. 12356: DECL: OADR

TAGS: EPET, EINV, KALR, CO

SUBJECT: GOC CONTROL OF NEW PIPELINES AND NEW DECREE TO OCCIDENTAL IS AFRAID IT WILL HAVE A DETRIMENTAL EFFECT ON THE VOLUME AND PRICING OF EXPORTS.

8. TAYLOR SAID HE WAS NOT ASKING FOR EMBASSY INTERVENTION AT THIS TIME, SINCE OCCIDENTAL WAS STILL TRYING TO DEAL WITH THESE TWO DECREES THROUGH THEIR OWN

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CHANNELS. THE AMBASSADOR, HOWEVER, AGREED THAT THE IMPLICATIONS OF THE TWO DECREES ARE VERY DISTURBING FOR BOTH OCCIDENTAL AND COLOMBIA, AND HE SAID THAT HE WOULD TAKE AVAILABLE OPPORTUNITIES TO EXPRESS U.S. CONCERN ABOUT THE TWO DECREES TO SENIOR GOC OFFICIALS.

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